

STORMWATER QUALITY TREATMENT FACILITY
ACCESS AND MAINTENANCE AGREEMENT

This Agreement is entered into this ____ day of _____ 2008, by and between the City of Folsom, a Municipal Corporation of the State of California ("City"), and _____[insert Legal Name of Property Owner] ("Owner").

RECITALS

The following Recitals are hereby incorporated and made part of this Agreement:

WHEREAS, Owner is developing real property within the City, known as ("Project"), located at _____, Folsom, California, further described by APN No (s). _____ and depicted in Exhibit "A", of which is attached hereto and incorporated herein by reference (the "property" or "real property"); and

WHEREAS, Owner is the owner of said real property described hereinabove; and

WHEREAS, the City is required by NPDES Permit CAS052897 (Provision C.22) to require developments to provide verification of maintenance provisions for post-construction structural and treatment control facilities or devices; and

WHEREAS, the City's Stormwater Management and Discharge Control Ordinance ("Stormwater Ordinance"; Folsom Municipal Code 8.70) authorizes the City to establish development standards for post-construction treatment of runoff; and

WHEREAS, the Project is subject to certain conditions (including the requirement to include one or more post-construction stormwater quality treatment facilities to reduce pollutants in site runoff), as approved by the City on _____[insert date] (See Condition____, Project No. PN __-____), made a part of this Agreement by reference; and

WHEREAS, Owner has chosen to install the following post-construction stormwater quality treatment facility(ies): _____("Stormwater Quality Facility(ies)"), to minimize pollutants in site runoff; and

WHEREAS, said Stormwater Quality Facilities are being installed in accordance with plans and specifications acceptable to the City; and

WHEREAS, said Stormwater Quality Facilities, with installation on private property and draining only private property are private facilities with all inspection, maintenance or replacement, therefore, being the sole responsibility of the Owner in accordance with the terms of this Agreement; and

WHEREAS, the Owner is aware that periodic and continuous inspection and maintenance is required to assure peak performance of Stormwater Quality Facilities in accordance with the maintenance procedures prepared for the Stormwater Quality Facilities, which are attached hereto as Exhibit “B” and incorporated herein; and

WHEREAS, such maintenance activity must comply with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW THEREFORE, in consideration of the mutual promises contained herein, City and Owner hereby agree as follows:

1. **Stormwater Quality Facility(ies):** Owner and City agree to the installation of the Stormwater Quality Facility identified as _____ (the “Stormwater Quality Facility” or “Facility”) on the Property by Owner, all pursuant and subject to the terms and conditions of this Agreement.
2. **Access by City and Other Public Entities:** To the fullest extent allowed by law, Owner hereby provides to the City, its authorized agents and employees, the Sacramento County Environmental Management Department, the Sacramento-Yolo Mosquito and Vector Control District, and the Regional Water Quality Control Board, complete access to the Stormwater Quality Facilities and its immediate vicinity as deemed necessary by any of the foregoing entities to verify compliance with the City’s Stormwater Ordinance and to protect public health and safety. These entities may enter the premises at any reasonable time to inspect the premises and operation of the Stormwater Quality Facilities, to inspect and copy records related to stormwater regulatory compliance, to collect samples and take measurements, and to perform emergency maintenance as needed. Whenever possible, these entities will provide notice prior to entry. These entities shall make every effort at all times to minimize or avoid interference with Owner’s use of the Property. This right of access shall be irrevocable by the owner during the entire time this Agreement is in effect.
3. **Term:** This Agreement shall remain in full force and effect until terminated by either (1) 90 days’ written notice of termination by the City to the Owner; or (2) mutual agreement of the City and the Owner. Owner shall have no right to unilaterally terminate this Agreement.
4. **Owner Responsibility to Maintain:** Owner shall maintain the Stormwater Quality Facilities pursuant to the requirements in Exhibit “B,” in a manner assuring peak performance at all times, during the time the Agreement is in effect. All reasonable precautions shall be exercised by Owner and Owner’s representatives in the removal and extraction of material(s) from the Stormwater Quality Facilities. Cleaning operations and disposal of the material(s) must be done in a manner consistent with all relevant Local, State and Federal laws and regulations in effect at the time of removal. As may be requested from time to time by the City, Owner shall provide the City with documentation describing maintenance dates and maintenance performed, and identifying

the material(s) removed, the quantity, and disposal destination.

5. **Failure to Maintain:** In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement in accordance with Exhibit "B", with not less than 72 hours prior notice to the Owner, the City is hereby authorized to cause any maintenance necessary to be done under the requirements specified in Exhibit "B". In the event of an emergency, as determined by the City, notice is not required. The City shall charge the entire cost and expense of such work to the Owner or Owner's successors or assigns, including administrative costs and interest thereon, at the rate of ten percent (10%) per annum from the date of written notice of expense until paid in full. The City is under no obligation to maintain, repair or monitor the Stormwater Quality Facilities, and this Agreement may not be construed to impose any such obligation on the City.
6. **Security:** If the Owner fails to maintain the Stormwater Quality Facilities as required to the standards specified in Exhibit "B", the City may require the Owner to post security in a form, for a time period, and in an amount sufficient and satisfactory to the City, to guarantee the performance of the obligations stated herein. Should the Owner fail to perform the obligations under this Agreement, the City may, in the case of a cash security deposit, act for the Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement and/or pursue any other remedy authorized by law.
7. **Agreement Binding On Successors In Interest:** This Agreement is an instrument affecting the title to or the possession of the real property. All terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of the successors in interest of Owner. Upon any sale or division of the real property, the terms of this Agreement shall apply separately to each parcel, and the Subdivider and/or Owner of each parcel shall succeed to the obligations imposed on Owner by this Agreement. As used in this Agreement, the term "Owner" shall include, respectively, not only subdivider and the present owner of the real property but also heirs, successors, executors, administrators and assigns.
8. **Recording of Agreement:** This Agreement shall be recorded in the Office of the Recorder of Sacramento County, California and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth.
9. **Notice to Successors:** The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide notice of the Agreement to any successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor. The failure of the owner to give notice shall not impair the effectiveness of this Agreement or its binding effect on successors.
10. **Notice:** Any notice to a party required or called for in this Agreement shall be served in

person, or by deposit in the U.S. Mail, certified or first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

OWNER: _____

ATTENTION: _____[Insert Name and Title]

CITY: Director of Public Works
City of Folsom Public Works Department
50 Natoma Street
Folsom, CA 95630

11. **Indemnity:** To the fullest extent permitted by law, the Owner agrees to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence, inspection or maintenance of the Stormwater Quality Facilities by the Owner, or from any personal injury or property damage that may result from the City or other public entities entering the Property.
12. **Attorneys' Fees:** If a dispute arises between the parties concerning the performance of obligations under this Agreement or the meaning or interpretation of any provision of it, the prevailing party to such dispute shall be entitled to the recovery of all costs and expenses incurred by the other party, including costs and reasonable attorney and expert witness fees.
13. **General Provisions:**
 - a. **Entire Agreement.** The parties declare and represent that this Agreement contains the entire agreement of the parties pertaining to the subject matter hereof.
 - b. **Modifications.** Any changes to this Agreement whether by additions, deletions, waivers, amendments or modifications, may only be made in writing and must be signed by all parties in order to be effective.
 - c. **Waiver/estoppel.** No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be a waiver of any proceeding, concurrent or succeeding breach of the same, or any other term or provision thereof. No waiver shall be binding unless in writing and signed by all parties to this Agreement. Failure of any party to enforce any right provided by this Agreement

shall not constitute a waiver or estoppel of said right. Any waiver by any party of any term or provision of this Agreement shall not be deemed a waiver of any other term or provision of this Agreement

- d. **Execution in Counterparts.** This Agreement may be executed in counterpart copies, which together shall constitute one and the same instrument.
- e. **Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

Date: _____

CITY of FOLSOM,
Municipal Corporation ("City")

By: _____
Kerry L. Miller
City Manager

Date: _____

("OWNER")

By: _____

Title: _____

Approved as to content:

Richard J. Lorenz
Public Works Director

Date: _____

Approved as to form:

Bruce C. Cline
City Attorney

Date: _____

ATTEST:

Christa Schmidt
City Clerk

Date: _____

NOTARIES ON FOLLOWING PAGE

NOTICE: SIGNATURE(S) MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of civil code section 1189 must be attached for each person executing this agreement. California Civil Section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

Insert notaries here

EXHIBIT A
Legal Description

EXHIBIT B
Operation and Maintenance Requirements

WHEN RECORDED RETURN TO:

**CITY OF FOLSOM
DEPARTMENT OF PUBLIC WORKS
50 NATOMA STREET
FOLSOM, CA 95630**

**RETURN TO: Stormwater Quality
Program Manager**

NO FEE DOCUMENT

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

**Stormwater Quality Treatment Facility Access and Maintenance Agreement Between the City of
Folsom and _____[Legal Name of Property Owner].**

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ACCESS AND MAINTENANCE AGREEMENT

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Municipal Corporation ("City")

By: _____
Kerry L. Miller
City Manager

Date: _____

("OWNER")

By: _____

Title: _____

Approved as to content:

Richard J. Lorenz
Public Works Director

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Bruce C. Cline
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EXHIBIT B
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